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February 6, 2003

Via Hand Delivery

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W., 8th Floor
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Ex Parte Presentation, CC Docket Nos. 01-338, 96-98, 98-147
*In the Matters of Review of Section 251 Unbundling Obligations of Incumbent
Local Exchange Carriers; Implementation of the Local Competition Provisions
in the Telecommunications Act of 1996*

Dear Chairman Powell:

By way of this letter: Granite Telecommunications Inc. ("Granite") strongly objects to the Qwest "compromise" proposal submitted on unbundled switching and urges the Commission to soundly reject the adoption of such proposal."

As an initial matter, the Qwest proposal is disconnected from the legally mandated impairment analysis.^{2/} Although Qwest proposes a 30 day sunset for new switching orders in LATAs where three or more competitive switches are present, it is telling that Qwest offers no credible support to demonstrate that carriers without available switching and transport to serve a LATA would *no*/ be impaired by the virtually immediate sunset. Indeed, as evidenced by the *ex parte* affidavits of Granite and numerous other carriers, absent the ILECs, there exists virtually no competitive wholesale switching market. Qwest's filing also fails to highlight the fact that most CLECs with switching capacity have no actual capacity or capability to offer a viable wholesale switching alternative to the ILECs. Because self provisioning is currently not economically or operationally feasible for Granite and other new entrants, if adopted, Qwest's proposal would, as a practical matter, result in an almost immediate freeze on new order provisioning by CLECs. **As** Granite and other CLECs have stated previously, the final impairment analysis cannot presume that because some carriers of significant size or market penetration are capable of deploying switching in a market, other new entrants would not be impaired in the absence of an actual competitive wholesale market for that UNE.

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List A B C D E

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Chairman
February 6, 2003
Page 2

As a secondary matter, Qwest's proposal is deficient because it defines markets on a LATA basis. Granite maintains that the impairment analysis must be conducted on a central office by central office basis. This granular level of analysis not only is mandated by the Court in *USTA* but also requires the substantial input and guidance of the state utility commission, a factor that is noticeably lacking in the Qwest proposal.

Respectfully,

A handwritten signature in black ink, appearing to read "L. B. W." followed by a stylized flourish.

William B. Wilhelm, Jr.
Counsel to Granite Telecommunication, Inc.

cc: Commissioner Kathleen Abernathy
Commissioner Kevin J. Martin
Coinmissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
William Maher, Chief
Marlene H. Dortch. Secretary

1/ Letter from R. Steven Davis. Qwest, to Chairman Powell (January 30, 2003).
2/ *US Telecom Ass'n v FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA*").